

BOARD OF OKANOGAN COUNTY COMMISSIONERS
07/10/2017

In Attendance at Meeting:

Jim DeTro- JD (BOCC)
Andy Hover - AH (BOCC)
Chris Branch - CB (BOCC) (absent)
Lalena Johns - LJ (County Clerk)
Perry Huston - PH (Admininstrator & Planning Director)
Angie Hubbard - AHu (Planning Department)
Char Schumaker - CS (Planning Department)
Dan - D (Building)
Albert Lin - AL (Deputy Assistant Prosecutor)
Brian - Member of the public

These notes have been taken by one of several volunteer citizen note takers and published on the website of Represent Okanogan County (ROC.) The notes have been taken as close to verbatim as possible, with any writer's comments or explanations in italics. For officially approved minutes of Board of Commissioner meetings, normally published at a later date, see www.okanogancounty.org.

Summary of significant discussions

Update - Planning and Administration
OCC 20/Hirst

The commissioners and PH had a wide-ranging discussion on Title 20/Hirst issues, including what is transpiring in the legislature; how the Department of Ecology (DOE) has historically dealt with exempt wells in closed basins; the state of the backlog of building permit applications. Brian, a member of the public with clients involved in subdividing and selling land, urged the commissioners to remove the burden for identifying water availability from sellers to buyers; the parcels would be sold 'as-is'. The implications of Brian's suggestions were discussed at length.

Shoreline Management Plan (SMP)

The commissioners compared the Shoreline Development Standards table from three draft versions of the SMP and discussed the reasons for changes between versions and the history of the development of the documents.. Various interacting levels of regulation applying near waterbodies: Critical Areas Ordinance, zoning and SMP were discussed. Evidently the belief is that, collectively, these provide adequate protection of property rights, public safety and the environment. AH asks note taker for her opinion on distances needed to

maintain ecological integrity; she replies that if the Channel Migration Zone (CMZ) and floodplain are respected, the ecological functioning is probably protected. Compliance enforcement capability for these regulations is lacking; currently PH provides all the enforcement and he has time constraints. The appropriateness of shoreline designations was raised; AH does not want to begin examining designations, due to the time required. Changes to designations will require amending the document with the Department of Ecology (DOE).

Miscellaneous - Possible visit by Secretaries of Agriculture and Interior

JD is reaching out to Secretaries Perdue and Zinke (Agriculture and Interior) and is anticipating a possible visit to discuss concerns including grazing, wolves, ATV use lack of coordination by federal agencies with county officials. He wants to include various user groups in any meeting.

1:40 Update - Planning

OCC 20/Hirst

PH - Got a call from Wenatchee World re. Governor's Office issuing temporary exemption. No idea what they were talking about. Was directed to drill in on potential legislation (*mentions 2 bills*). According to (*County lobbyist?*), the negotiations are not going well. 5239 at least reinforces that we can rely on instream flow. There's enough flexibility in instream flow rule; what is continuity? Commissioner Branch has been (involved with legislative issues).

AH - No interest in providing support for something that is not going to be a fix or help us be efficient. We are already relying on instream flow rule.

PH - They are not going to pass anything. If anything, they will form a blue-ribbon committee. (*describes previous efforts that came to nothing*). I have been wrong before... Okay, we will just monitor. Preparing for hearing coming up on the 10th (*on one water certificate*).

AH - (*too rapid to record*)

PH - Went back over what kind of paperwork Department of Ecology (DOE) is issuing in a closed basin. Issued a start card with details of well construction.

AH - This is an old well in a closed basin?

PH - (*too rapid*) Gives rise, if we are going to be consistent (*Burkholder?*) Ecology denied. We can't change Ecology's mind. Hearing examiner was compelled by that argument. Arguably, the reverse is true; Ecology approved well.

AH - So we deduct it from the 2 cfs?

PH - We are almost duty-bound. When we last chatted, we were going to change (?). Did we get that appointment?

LJ - Yes. Also, Mark Miller requested to be reappointed (*to position in District 2*).

PH - What is our missing spot on the VSP?

AHu - (*inaudible*)

PH - Figure out which district it is. Commissioners can decide what to do with it.

JD - My district?

PH - Stokes is the one who left (*Vic*)

AH - That is my district.

PH - Will pull that up, send you and email. We have received no word on the contract. Sent in reimbursement in June. We'll pick that up. Back to 20. Dan?

D - No major issues.

PH - (*cites the numbers of permit applications*) We are pushing them through as fast as we can. My budget is already shot. We are already at 90% of project revenues for collection. We will spend close to twice that, before we are done.

AH - (*send in by email?*)

PH - As much as we can. Big expense is water (*analysis of availability information?*). Wait and see what the legislature does.

Brian - Haven't heard any comment. Have 2 concerns about how we are processing. Ag land subdivision, we have go through water availability. Not any new water usage on the existing domestic well. Don't know what to tell clients. The other is exempt segregations, 2 - 20's \$250 for water availability. Should be borne by people who buy the lots.

AH - How do you represent the properties? Dry lot?

Brian - Yep. My clients sell lots 'as-is'.

PH - Short answer to that question is 'Title 20 says so'.

AH - Talking about (*WRIA*) 49?

PH - No, everywhere. Title 20 wording, you could make argument that (*too rapid*). Theoretically we could shift our interpretation. Exempt ag; Hirst cited 5817 as our responsibility. But it grants exceptions, including 5 acre parcels. Didn't address question of (*too rapid*). And to Brian's point, fair enough. They are not proposing to drill wells.

AH - When Campbell-Gwinn came about in 2002, what were the implications for land division?

PH - Got only one exempt withdrawal per application. Developer was going to drill all the wells and then sell it. He argued he wasn't going to withdrawer water, buyers were. Court didn't find that compelling. DOE has tried to reach back in time, drawing a big circle around project. Mixed bag, sometimes they do, sometimes they don't. Pretty quiet lately.

AH - Snapshot in time when the decision came down?

Brian - I am looking at 4 - 20's.

AH - But people come in and break up the 20's.

Brian - Don't think they can police it; they (*Brian's clients*) are looking at 2-20's.

AH - And when those guys take them down to 4-5's, you still only have 2 wells. I manage a lumber yard. Building is an important thing to our economy. However, at some point in time, we are going to be like (*tries to think of cities in Columbia Basin that are running out of water*).

JD - Dealing with surface water of ancient water?

AH - Probably ancient water.

PH - You are talking about the Odessa aquifer.

AH - They are different, but at the same time, if you withdraw from a stream...

PH - Appreciate Brian coming in and sharing with you. We can work on the interpretation on the first concern.

AH - At the same time, you have to protect purchaser.

Brian - *(describes condition of ag exempt; reiterates argument)* Slam dunk; common sense to me.

PH - We would have to amend *(Title)* 20.

AH - People are not going to be contentious over the fact that you split 100 acres going residential into 5 -20's. How are you going to keep track?

Brian - It has always been that way. Who is policing it? To me, DOE doesn't have enough people to do it.

JD - They put it on us.

AH - That is part of the discussion we will have with DOE. Technically, you can just go out and build a house without a permit, but when they go to sell it, that's when it comes into play. Same thing with a well. You can just get a driller. But when you go to sell it, you have to have a permit. Water availability is the only place you can really find that out.

Brian - That is why I want to tie it to the building permit.

JD - They can always put in a cistern.

AH - Right. Like they do in Arizona. People might have to start thinking about it. Perry would be okay; permit would go right through.

JD - There are those types of exceptions to every situation.

AH - Understand your concern, but we have to make sure we are following the right process.

PH - Am working on a paper with some suggestions. Will take Brian's issues.

JD - When we started working on it, we knew it would be an ongoing process. How are we going to avoid plugging up the drain, making it too hard? Economic stability of the County. Need to use a little common sense, if we can.

PH - Will work up some suggestions. Title 20 was in the works prior to Hirst. Some of the timelines we have imposed on ourselves are becoming a bit impractical. Booked out for the next 3(?) weeks. Where we can, we are vesting. Helping people figure out whether they have a water right. Figuring out how to phrase our questions differently so we get what we need to know. That will speed things up, some. Fewer phone calls & emails. We will work on the application package, make it easier for people to understand what they need to send in to us.

AH - *(question about Ecology meeting scheduling)*

Char - Don't know.

PH - Sage could have come over. People in Olympia are busy (*with legislative activities*). Dan - anything else on 20? (no) Angie? (no)

Brian - Just the processing. If we need Beardsley here more than what he is... Just to catch up, get these things processed. I think it would help out. Talking to one of my clients this morning. He doesn't care about what it would cost, he just wants to get through it. Ag exemption lots/water right. Don't know how quickly you could come to a decision. We've been doing it that way forever.

JD - Commissioner Branch has been a planner forever. Want him to be here.

AH - How long would it (*previously*) take you for making 2 - 20's?

Brian - 2 weeks.

AH - That is extremely fast.

Brian - Now it takes one or two months.

AH - Heard you say people don't care what it costs, but some people do. We have to cover our costs, getting Beardsley here.

Brian - People want to sell.

JD - Can't have a tiered process; expedited and slow. AL is going to say no.

AL - My concern is, are we really thinking through County's liability and if we are really following process?

PH - Linchpin is not whether County will meet its obligations under Hirst. Land divisions make no difference. Argument we would have to make is to cite all of 5817.

Brian - I am not saying pushing things through. I am saying all the divisions have to go through Beardsley. He is only here once a week. It's going to take a while.

AL - Part of the problem is on my end, trying to figure out where we have a situation, a court case out there. We still don't know where we are going with these issues.

AH - If we don't take in all this information, think about all these things, when we get sued, people will say that we didn't use all the information. If Beardsley is backed up, maybe we should change the schedule, but we have to think about the expenses.

AL - Title 20 was established to create a record. Establishing whether there was available water. Think that was the thinking behind all of that. Maybe there needs to be an adjustment, but concerned about the effect on the legal situation.

PH - We are already examing (*too rapid*). Exempt ag, maybe we can look at that, whether we can modify. One thing I have to balance - we could bring in Beardsley more often, but the thing is I have to try to orchestrate how much staff time I can dedicate to getting ready to go in front of Beardsley.

AH - Right. More than just front-end. Also...

PH - Good information. Will peel off the subject of ag exempt lots, send it to the commissioners.

AH - Does it mean anything you do, splitting up a property or....

AL - Title 20 is silent about that.

JD - Need legislature to address that.

AH - Will get you information.

Shoreline Management Plan (SMP)

PH - Commissioners talked about meeting on Wednesday, but I don't think the commissioners have time.

LJ - (*provides details of schedule*) Have the 18th scheduled, all afternoon.

AH - Only have a select number of questions that I need answers to. Don't know about other commissioners. The vegetation conservation areas listed in the table, was that purely from the Planning Commission, or was that added to by others?

AHu - (*inaudible*)

PH - Give the commissioners what you have. The actual linear distance never changes. The total setback never changes, you just have is broken up in different ways.

AH - Don't think it's true if.... (*question about handout*). Zone one and zone 2 combined use buffer & setback (*reading from handout*).

AHu - Combined on one page; broken into 2 on the other.

AH - Let's look at 'Conservancy'. Originally, combined was 150 ft. Then Zone 1 buffer was 75 ft., then Zone 2 buffer was 75 ft.

PH - Request Executive Session before AL leaves (*moved & passed*).

Note taker asks AHu about handout. Shorelines Development Standards Table from 2010 (first draft), 2015 and current draft.

AHu - Some changes Natural went from 200 ft to 150. Biggest change in Rural Residential. Have to look.

Commissioners return; AHu provides another handout (1/27/15 draft)

AH - What was Zone 1/Zone 2 buffer come from?

AHu - Came out of Advisory Committee. What Commissioner Branch was talking about. Zone 1 was veg. mgt area; Zone 2 was setback.

AH - Between buffer and building setback, you can do what you want to do. Talked to my Dad about that; they built 3 buildings right next to river; river changed and took them.

AHu - What came out of Planning Commission in 2010 and 2015 (*handouts*). Mackie and Advisory Committee went through draft, went back to Planning Commission. Then, this (*handout*) is what we have now.

PH - Don't think numbers, other than lake changed.

AH - No (*cites Natural, Conservancy*) Back then, they used underlying zoning for the minimum lot size, and then, (*inaudible*). Is there minimum water frontage? (*reads it*)

inaudibly) So that got dropped. 1,000 feet on the original. What if lot was less than 1,000 ft? They shrunk it to 500 ft in the Natural. Natural is almost all public land, right?

AHu - And conservancy.

AH - What about fencing?

PH - It would be a change in use but it would still be permitted. There is no regulation cited anywhere for fencing.

AH - What was the riverine/lacustrine?

AHu - Applied in places where (*inaudible*) There are places in the Methow.

AH - But the new draft addresses CMZ.

AHu - Right.

AH - So, 2010 came out of the original Planning Commission. Where did the 2015 version come from?

AHu - There was a new Board, and then it was reviewed by Mackie and an Advisory Committee. Then it went back to the Planning Commission. (*mentions some of the people on the advisory committee*)

PH - The Board of Commissioners reviewed that work and then remanded it back to the Planning Commission (*due to the extent of changes*)

AHu - Don't think they changed that much (*inaudible*).

PH - Might remember that was when you were poised to send that to Ecology.

AH - Read through every comment. The things that kept coming up were the Fish and Wildlife (F & W) habitat conservation. Salmon in everything. But what I saw on the map, looked like most of it was under F&W habitat conservation.

AHu - That was from Mackie - applied it only to Natural areas. If you go with Lennard, it applies to (*threatened species habitat*).

AH - In that case, what is the process? Say I have a piece of property and I want to do something to it. What do I have to do if I do it today?

AHu - F&W habitat conservation plan.

AH - How much does that cost?

AHu - Don't know. Some of the plan could incorporate the existing buffers & setbacks. Might be some simple conditions, like, contain your dirt and fill so that it doesn't slough off into the river. Mitigate that. Don't remove so much shade.

AH - But you already have veg. cons. area...

AHu - Right.

PH - The attorney would say that it adds another layer of regulation. Now, with this other layer, essentially you would have an independent review of what you need to do. In his (*Mackie's*) mind, it should only apply to critical habitat for endangered species.

AH - If you have someone on the lake, where there is no endangered species, and you want to cut everything down, then.... (to JD) What are your thoughts, if we go with DOE's recommendation?

JD - If we add that now, will it mitigate or will it cause litigation?

AH - Trying to run through...

JD - Want to make sure that Department people are okay with this and are on our side.

PH - Counter-argument to attorney is that if your plan is adequate, it shouldn't make any difference. Both sides arguments are speculative.

AH - As far as Ecology's suggestions. We have already done the 2 definitions. Now talking about how to apply definitions within this table. (*describes current vs. original*) Assuming you could do more things in Zone 2 than in Zone 1 (*yes*). Now it is like veg. cons. Area vs. setback. Conservancy was 150 ft; now it is 100 ft. Do we add a 50 ft. setback.

PH - Commissioner Branch's concern was more to do with whether the designations are appropriate. But if you move a lot of the designations are changed, that is going to change the scoring.

AH - How long did it take to do that? I can't go through and look at every 2 acre lot. Don't have the resources.

PH - We have had that conversation. Probably whether 50 ft or 60 ft is needed to maintain ecological integrity - that is probably site-specific. More compelling is public safety. Commissioner Hover was threatened with a lawsuit when a cabin was threatened by the river, because he let him build it there.

JD - Channel migration areas are different.

AH - So, does the CMZ become the setback?

AHu - That is de facto. If they want to be there, they have to get a geotechnical analysis to show that it won't be there for the life of the project.

AH - Not sure about that. (*References Loup Loup debris flows*) So the underlying restrictions apply, then the CMZ is overlaid on top of that.

PH - And CAO. Even when Shorelines designation doesn't apply...

AH - Just want to make sure we are taking in all the information that is available. One of the biggest fears is whether the regulations will be enforced. If you just sign off on it, then there is no.

AHu - When they draw site plan, they have to provide a lot more detail.

PH - Challenge is when we review what they give us, we don't allow with building inspectors - they are not necessarily geared to looking at that. Did they do what they said they were going to do. (*Palmer?*) they didn't do it the way they said they would. That is one of the things we need to fix.

AH - We would be more defensible if we have the mitigation for what is going to go on. This document is part regulation, part zoning. What other supporting regulation can we use to make sure this document is followed? You don't get a permit until we...

PH - Part of this we are beginning to implement through the JARPA. Old days, silence was consent. We won't issue our exemption until all the other agencies have weighed in. One of my inspections is for the foundation. Get the inspectors in tune with that stuff. Eventually, someone is going to spend more time in the field, making sure of compliance before it get too far. We are going to have to spend more time in the field or tag-team with Building.

AH - Public safety aspect to Zone 1/Zone 2? Or was it environmental?

AHu - Entrix did not agree with Golder study, so CMZ was not included in first draft.

PH - Didn't agree on methodology. Didn't necessarily agree on product.

AHu - Think it is better to include CMZ in the document.

PH - No brainer.

AH - Agree. Affects everybody in that designation. Depends on location - stable vs. bends. Trying to come up with the amount of room - 50 ft vs. 75 ft. Protect property rights but keep people safe.

PH - Not sure we got it right. Tried to establish a standard. If you stay this far back you protect values. If you want to do something different, you have to prove it's okay. Right now the habitat is same as the setback. If you want to...

AH - Think it has to be like that. My property, if I want to build, I want to get as close as I can to the river. (*refers to setback greater than veg. cons. Area*). In your opinion, do we add to this, or do we keep it the same, under the banner of safety?

PH - Right now your habitat conservation area is the same as your setback. I wouldn't put a house any closer to the river. This has been through a lot of review. You could make your conservation area smaller. I wouldn't reduce it much. It would introduce a whole new level of ire.

AH - (*asks note taker's opinion regarding setback; response is if CMZ and floodplain are respected, the ecological functioning is probably okay*) Is this the only question we still have?

PH - (*describes what is left to do to finalize*) If we get through habitat conservation we are probably about done.

AH - (*discusses 25 ft added to veg. cons. Area for setback*). I am going to give a little thought to...

PH - Are we on for the 18th?

LJ - Yes.

AH - I think I'll be able to work through it by next Tuesday.

(*discussion of the effects on the 'scoring' if. Designations are changed*)

AH - What if we finalize and send it off, what if someone says 'Hey, I think this designation is incorrect'?

PH - You would have to amend it (*with Ecology*). In many cases the setback is academic (*floodplain*). CAO, Zone Code. You don't have the extra layer with Ecology. If you try to relax it (*the designation*), that will be harder. The designations were looked at and looked at.

AH - Right. Didn't see any comments about designations.

PH - Argument about habitat cons. Areas evolved quickly into speculation. If we go along with Ecology's suggestions. Rest of the arguments were back and forth. Recommend (*inaudible*). 10 years, lack of comfort with discussion of enforcement. Made a run of training a code enforcement officer 5,6 years ago. That blew up. I do most of the code enforcement. Time is problem. Always takes at least half the day. Reluctant to send crew out; they are not trained. What to look at; how to stay out of trouble; how to get out of trouble. We pledged, under the banner of mitigation, to have a more robust enforcement effort. It is an issue we need to deal with. So, the 18th? You don't need a projector?

AH - Don't think so. Not going to go through it parcel by parcel. For me, just need to go through it - is this enough, do we need to add a little bit for safety? Want to make sure we are not over-regulating.

PH - District use chart migrated in from somewhere else.

AH - Don't regulate it here. Let's look at zoning. Appreciate you going through thought process.

VSP

PH - Contract entered in mid-June (too rapid). No idea what shape contract will take. Money is there. Will have some discussion next week.

Tonasket EMS

PH - State auditor scheduled exit interview for Tonasket EMS for next week.

County Fair

Fairgrounds. Everyone is going to be involved in that. They are happy with the gate. They are mostly going to look at the contracts and the fee schedule.

LJ - They did ask about the resolution for the fee schedule, which there is none.

AH - Do we need one every year?

LJ - You need a resolution for the fee schedule that you are using. (*fee schedule in use is from 2012, but no resolution*).

AH - Can we set aside some time to go over the fee schedule?

PH - Need to take a swing at that. Don't know where Josh is on that?

AH - Carve out some time, go over it with Josh & Kim. Make any adjustments and make a resolution.

PH - Need to work on protective classifications, variances. Will pick that up in short order.

Tax Title Property - Church proposal

PH - Church proposal - Lanie has been bird-dogging that.

(*rapid discussion of agreement*)

PH - Will make sure we keep Joe on them.

Jail Ceiling Project

Last thing - Jail ceiling project. Have budget worked around to proceed. Need to contact Beeman, freshen up all that, give them notice to proceed. They will prepare bid documents.

AH - Tanya is going to take the lead on that. Told me she had the time to deal with it.

PH - Not what she told me last week. Will touch base with her.

Miscellaneous

JD - Talked about inviting Sec. Sonny Perdue; Sec. Ryan Zinke. Grazing, PH gave me file of our correspondence, how they have ignored the coordination. Bryan Dandel thinks we have an excellent chance of having them come to visit. Rep. Newhouse...

AH - Think that is excellent.

PH - Will coordinate. Put together a packet and cover letter.

AH - Need to think about who needs to be here. Washington Cattlemen's Association; Idaho Cattlemen.

JD - County Farm Bureau. ATV community. All the interests involved. Want to reach out to (?). They have been threatened, harassed. They shoot the cows every year.

LJ - Remember you have North Eastern County Coalition (*formerly Quad Counties*) this Friday.

Discussion - Juvenile Staffing - Dennis Rabidou

DR - Discussion last year. Staffing wasn't in the budget. We had requested it. Found it was moved somewhere else.

AH - 100% grant money (*yes*). Do we have to pay FICA?

Staff - Revenue doesn't match.

JD - Will that be a problem with the grant?

Staff - if we get audited. Off by \$51,000.

DR - (*inaudible*)

AH - Ongoing position? (*correct*)

Staff - It has been there all along, just never filled.

AH - so it was in the budget and then it disappeared? (*yes*) Not sure if she knew that it was grant funded. Problem is we don't always write it down.

(*rapid, multiple conversations*)

Staff describes how to handle the budget discrepancy.

AH - good. Don't see an issue with it.

Sabrina - That is why we want Carri here.

DR - So it is okay if we talk with her (*yes*)

Staff - Should do a resolution.

(rapid conversations; supplemental; expenditures)

AH - Not taking money out of the general budget. *(more rapid conversations on budget minutiae)*

4:21 *Note taker is overwhelmed with rapidity and complexity of budget discussion and leaves.*